



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Bert Ford, Administrator
Texas Liquor Control Board
Austin, Texas

Dear Sir:

Opinion No. 0-5191

Re: Has the Commissioners' Court of Ector County the legal power to establish closing hours for the sale of beer in harmony with a contemplated ordinance having the same effect to be passed by the City Council of the City of Odessa which is situated within Ector County?

Your letter of April 7, 1943, requesting the opinion of this department on the above stated question reads as follows:

"The Honorable A. H. Dennison, Judge of Ector County, Texas, has made request that an opinion be asked from you as to whether the Commissioners' Court of a county has the legal power to establish closing hours for the sale of beer in harmony with a contemplated ordinance having the same effect to be passed by the City Council of the City of Odessa, situated within Ector County.

"In other words, it is the desire of the Commissioners' Court to establish 'curfew hours' for the sale of beer in areas of the county situated outside of incorporated city limits, in the event the City of Odessa by ordinance establishes closing hours within the City."

Article 667-10, Vernon's Annotated Penal Code provides:

"(a) It shall be unlawful for any person to sell beer or offer same for sale between the hours

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of 12:00 o'clock midnight and 7:00 a. m. of any day or from and after 12:00 o'clock midnight Saturday until 7:00 a. m. Monday of the following week; provided, however, that any holder of a Retail Dealer's License or a Wine and Beer Retailer's Permit shall, upon showing to the satisfaction of the County Judge that he is engaged also in the sale of food and other commodities for human consumption, and that the sale of beverages for which a license is required does not during such prohibited hours normally in the course of any one week's time amount in dollars and cents to more than the sale value of food and other commodities for human consumption sold by such licensee during such hours, be entitled without being required to pay any fee therefor, to a supplementary license authorizing him to sell such beverages during any hour of any day. Said supplementary license shall be on a form furnished by the Board or Administrator and upon being issued shall be attached to and become a part of basic license of the holder, and such supplementary license shall expire with the license of which it is a part; provided further, that the Board or its representatives may at any time make inquiry into the business of such holder; and unless it can be shown by the licensee that his sales of alcoholic beverages are not exceeding in value the sales of food and other commodities for human consumption during the hours referred to in this provision, the Board or Administrator is authorized after notice and hearing to issue an order revoking such supplementary license, and the holder of a license so revoked shall not be entitled to a supplementary license for six (6) months thereafter.

"It is provided that during the period of thirty (30) days after the effective date of this Act as to all persons authorized to sell beer at retail, and during a period of thirty (30) days after the issuance thereof as to any new license or permit authorizing such sale (but not as to any renewal) it shall be presumed that the principal business of the licensee or permittee is not the sale of alcoholic beverages; and during

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such period of time as against any particular licensee or permittee the restrictions of this Section and Section 2 of this Article shall not apply.

"(b) It shall be unlawful for any person to make any sale of beer anywhere in this State on the day of any general primary election or general election held in this State between the hours of 7:00 a. m. and 8:00 p. m. of the day; provided, however, that the holder of a Manufacturer's License or a Distributor's License may make deliveries at wholesale during such hours to the bona fide holders of licenses or permits to sell beer, but shall not make any sales or deliveries to any other person."

Article 667-10 $\frac{1}{2}$, Vernon's Annotated Penal Code, reads in part as follows:

". . . .

"All incorporated cities and towns are hereby authorized to regulate the sale of beer within the corporate limits of such cities and towns by charter amendment or ordinance and may thereby prescribe the opening and closing hours for such sales; such cities and towns may also designate certain zones in the residential section or sections of said cities and towns where such regulations for opening and closing hours for the sale of beer shall be observed or where such sales may be prohibited."

It is well established in this State that the commissioners' court have only such power and authority as is expressly conferred by the Constitution and the laws of this State or the power and authority necessarily implied therefrom.

The Legislature or Constitution has not conferred upon the commissioners' courts any power to fix the opening and closing periods for the sale of beer. Therefore, we answer the above stated question in the negative.

Very truly yours

ATTORNEY GENERAL OF TEXAS

BY

Ardell Williams

Ardell Williams
Assistant

APPROVED

OPINION
COMMITTEE

BY *Blut*

CHAIRMAN

APPROVED APR 26, 1943

Gerard C. Mann
ATTORNEY GENERAL OF TEXAS

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